Eye on Washington

Regulatory Update

IRS Final Regulations Address the Affordable Care Act “Family Glitch”

On October 11, 2022, the Treasury Department and Internal Revenue Service (IRS) issued a final rule that resolves what has been referred to as the “family glitch” with respect to eligibility for subsidies towards health coverage purchased on the Health Insurance Marketplace. Section 36B under the Affordable Care Act (ACA) provides that employees and their families are not eligible for subsidies if they are determined to be offered affordable, minimum value employer-sponsored health coverage. Under current regulations, if the employee’s required contribution for self-only coverage does not exceed 9.5 percent (as adjusted) of their household income, the coverage is deemed affordable even though the cost of coverage including family members may not be. Similarly, if the employee-only coverage offered meets the minimum value requirement – covering at least 60 percent of the total allowed costs of benefits and including substantial coverage of inpatient hospitalization services and physician services – it is also considered to be minimum value for family members or “related individuals” whether family coverage meets the requirements. This is commonly referred to as the “family glitch;” i.e., that health coverage affordability and adequacy have been measured for the employee, but not the family.

How Affordability and Minimum Value Will Change for Family Members

In January 2021, President Biden issued Executive Order 14009 “Strengthening Medicaid and the Affordable Care Act” that tasked government agencies with reviewing policies and procedures that may reduce the affordability or financial assistance for coverage, among other things. On April 7, 2022, a proposed rule was issued to change how affordability of coverage and minimum value is determined for an employee’s related individuals. This final rule upholds the changes as proposed. Specifically, it provides for a separate affordability test where an eligible employer-sponsored plan is affordable for a related individual if the employee’s required contribution for family coverage under the plan does not exceed 9.5 percent (as adjusted) of household income. If an eligible employer-sponsored plan provides minimum value to an employee, the plan will also be deemed to provide minimum value for related individuals if the scope of benefits is the same for the employee and related individuals and cost sharing (including deductibles, co-payments, coinsurance, and out-of-pocket maximums) under the plan is the same for the employee and related individuals under the tier of coverage that would include the employee and all related individuals. Some employers may see a shift where employees move to employee-only coverage in cases where their spouses and/or dependents could be newly eligible for subsidies through the

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Marketplace. This could happen as early as the upcoming 2023 plan year as the final regulations apply for taxable years beginning after December 31, 2022.

No Change to ACA Employer Mandate

The existing affordability test does not change for the employee based on this final rule. The current safe harbors that an employer may use to determine affordability for purposes of the employer-shared responsibility provisions under section 4980H continue to be available for employers, and while these final regulations may affect a related individual's eligibility for a subsidy, they do not affect an employee's eligibility. Accordingly, these changes do not affect the employer's potential liability for an employer-shared responsibility payment as it is triggered by the allowance of a subsidy with respect to a full-time employee of an applicable large employer (ALE) and not a family member.

As a reminder, IRC Section 4980H under the Affordable Care Act (ACA) requires ALEs to offer their full-time employees and their qualified dependents the opportunity to enroll in affordable, minimum value minimum essential coverage (MEC) under an eligible employer-sponsored plan or potentially make an employer-shared responsibility payment to the IRS. An ALE is an employer that employed an average of at least 50 full-time employees (including full-time-equivalent employees) during the preceding calendar year. Employees are considered full-time in any month that they are credited with at least 30 hours of service per week, on average, or 130 hours of service in the month.

If an ALE does not offer coverage or offers coverage to less than 95 percent of its full-time employees (and their dependents) for one or more months of the year, and at least one of its full-time employees receives a subsidy, the ALE owes an employer-shared responsibility payment (ESRP). The amount of the payment for each month equals the number of full-time employees the ALE employed for the month (minus up to 30) multiplied by 1/12 of $2,000 (as adjusted). For plan years beginning in 2022, the adjusted ESRP amount is $2,750 and is increasing to $2,880 for plans beginning in 2023. For an ALE that offers coverage to at least 95 percent of its full-time employees (and their dependents), but has one or more full-time employees who receive a subsidy, the payment is computed separately for each month. The amount of the payment for the month equals the number of full-time employees who receive a subsidy for that month multiplied by 1/12 of $3,000 (as adjusted). For plan years beginning in 2022, the adjusted ESRP amount is $4,120 and is increasing to $4,320 for plans beginning in 2023.

No Impact to ACA Information Reporting Requirements

The Treasury Department and the IRS also clarify that there is no impact to the information reporting requirements for employers under sections 6055 and 6056, which is completed on either Form 1095-B, Health Coverage or Form 1095-C, Employer-Provided Health Insurance Offer and Coverage. Section 6056 under the Affordable Care Act (ACA) requires ALEs to report to the IRS whether they offer their full-time employees and their employees' qualified dependents the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan. ALEs must furnish Forms 1095-C to employees or covered individuals regarding the health insurance coverage offered to them. Individuals may use this information to determine whether, for each month, they may claim the premium tax credit on their individual income tax returns. Form 1095-C is to be furnished and filed for each employee who was full-time for one or more months of a year and includes details of any health insurance coverage offered to the employee, reported on a monthly basis. For self-insured plans, Form 1095-C must also be provided to individuals who enrolled in qualified coverage, which may include non-full-time employees and any covered spouses and dependents.

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Additionally, IRC Section 6055 under the ACA requires providers of MEC (such as health insurers and small, non-ALE employers sponsoring self-insured plans) to annually report certain coverage information to the IRS and enrolled individuals. Form 1095-B is used by these entities to report MEC coverage of enrolled individuals.

Employers that qualify as ALEs (or may qualify in the future) should consult with appropriate legal and tax professionals to ensure compliance with Affordable Care Act coverage, recordkeeping, reporting and other related requirements. ADP offers comprehensive services to assist with such compliance, including required calculations and reporting of Forms 1095-C.

ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP *Eye on Washington* Web page located at **www.adp.com/regulatorynews**.

ADP, Inc.
One ADP Boulevard, Roseland, NJ 07068
adp.com

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